

BOARD OF APPEALS CASE NO. 5370

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BEFORE THE

APPLICANT: Evelyn Dunnigan

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow a deck
within the required rear yard setback;
709 Scottish Drive, Abingdon**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/6/03 & 8/13/03

HEARING DATE: September 10, 2003

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Record: 8/8/03 & 8/15/03

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Evelyn Dunnigan, is seeking a variance, pursuant to Sections 267-36B, Table VI, and 267-23(C)(1)(a)(6), of the Harford County Code, to allow a deck within the required 23 foot rear yard setback (21 foot proposed) in an R3/Conventional with Open Space (R3/COS) District.

The subject parcel is located at 709 Scottish Isle Drive, Abingdon, Maryland 21009 in the First Election District, and is more particularly identified on Tax Map 56, Grid 4C, Parcel 587, Lot 11, in the Monmouth Meadows subdivision. The parcel contains approximately 7,492 square feet.

The Applicant, Evelyn Dunnigan, appeared and testified that she is the owner of the subject property. She stated that she had read the Department of Planning and Zoning's Staff Report, and had no changes or corrections to the information contained therein. The witness indicated that her home was constructed behind the front setback line thereby reducing the size of the rear yard. Had the dwelling been constructed closer to the front property line, no variance would be needed in order to construct the proposed deck. She further stated that the rear of her property backs to an area of open space owned by the neighborhood homeowners association. There is a heavily wooded Forest Retention Area located directly behind the open space. The property is improved by a two-story dwelling, an attached two-car garage, a concrete driveway, walk and porch.

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The Applicant proposes to construct a deck on the rear of the existing dwelling large enough to accommodate an average size table and four chairs. The proposed deck would be 21 feet from the rear property line at its closest point, and would encroach 2 feet into the required 23 foot rear yard setback. The witness introduced a drawing of the proposed deck (Applicant's Exhibit 1) which shows that it will be 35 feet long by 12 feet wide. The rear of the deck will have steps descending to ground level.

Ms. Dunnigan identified several photographs designated as Attachment 8 to the Department of Planning and Zoning Staff Report. She indicated that the second photograph depicts the rear yard, with the existing home shown in the center of the picture. The third and fourth photographs also portray the rear yard, as viewed from the left side of the dwelling.

The Applicant testified that her home is located in the Monmouth Meadows subdivision, and that there are other homes in the neighborhood with similar decks. She further stated that several nearby property owners have been granted variances to build decks larger than the one which she is proposing. According to the witness, the granting of the requested variance will have no adverse impact on neighboring properties because the proposed deck will be compatible with both the existing dwelling and with other homes in the neighborhood. She also testified that all four adjoining property owners have signed letters in favor of granting the proposed variance. These letters were included as attachments to the Application. In addition, the Ms. Dunnigan indicated that she has received approval from her Homeowners Association to construct the proposed deck.

Mr. Allen Ecker was the second witness to testify for the Applicant. He indicated that the subject property is unique because of the wooded area located behind Applicant's home. He also pointed out that the fifth photograph contained in Staff Report Attachment 8, depicts a sign identifying the space behind the Applicant's property as Forest Retention Area. Mr. Ecker further testified that the Applicant maintains both the open space, and the right-of-way behind her home because these areas have not yet been transferred to the care of her Homeowners Association. Finally, the witness stated that the site plan designated as Staff Report Attachment 4, contains a scale drawing of the existing dwelling and proposed deck.

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The Department of Planning and Zoning recommended approval of the subject request in its August 13, 2003 Staff Report, stating "[t]he Department finds that the subject property is unique. The lot backs up to Open Space and Forest Retention area. The deck will be 12 feet wide which is consistent with other decks in the neighborhood. The request, if approved, will not adversely impact the adjacent properties or the intent of the Code."

No witnesses appeared in opposition to the requested variance.

CONCLUSION

The Applicant, Evelyn Dunnigan, is seeking a variance, pursuant to Sections 267-36B, Table VI, and 267-23(C)(1)(a)(6), of the Harford County Code, to allow a deck within the required 23 foot rear yard setback (21 foot proposed) in an R3/Conventional with Open Space (R3/COS) District. The proposed deck would reduce the rear yard setback to 21 feet. Harford County Code Section 267-36B, Table IV: Design Requirements for Specific Uses in an R3/COS District, requires a minimum 23-foot rear yard depth.

Section 267-23C(1)(a)[6] of the Harford County Code, authorizes the construction of rear decks, by allowing:

"Unenclosed patios and decks: up to but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.

Section 267-11 of the Harford County Code permits the granting of variances, providing:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a “peculiar characteristic or unusual circumstance, relating only to that property, causes the zoning ordinance to impact more severely on the property than on surrounding parcels.” Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. This involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The dwelling was constructed behind the front setback line, leaving insufficient room for the construction of an average width deck on the rear of the Applicant's home. If the home had been built closer to the front setback, no variance would be needed in order to construct the proposed deck. In addition, Applicant's property backs to both open space and Forest Retention Area. Therefore, the first prong of the Cromwell test has been met.

Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create unreasonable hardship or practical difficulty for the Applicant. The Hearing Examiner finds that literal enforcement of the Code in this case would result in practical difficulty for the Applicant, because the placement of the existing dwelling precludes construction of an average width rear deck without first obtaining a variance. If the requested variance is not granted, the Applicant will be denied property rights commonly enjoyed by other homeowners within the Monmouth Meadows subdivision.

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The Hearing Examiner also finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose of the Code or the public interest. There are other homes within the Applicant's neighborhood with similar, or larger rear decks. The proposed deck will be compatible with both the existing dwelling, and with other properties in the area. In addition, all four adjoining property owners have signed letters indicating that they support the granting of the requested variance. Finally, the Applicant's homeowners association has indicated that it is not opposed to the construction of the proposed deck.

The Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions:

1. That the Applicant shall obtain all permits and inspections necessary for the proposed construction.
2. That the Applicant not encroach further into the setback than the distance requested herein.

Date OCTOBER 6, 2003

Rebecca A. Bryant
Zoning Hearing Examiner